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Serial No. 10/796,697

Art Unit: 1617

**REMARKS**

Applicants respectfully request that the amendments be entered in the claims. The amendments to the claims are entered to conform to the Examiner's requirement in regard to the consisting essentially of language. The amendment to claims 1 and 14 is supported in the specification at page 8 beginning at line 11 extending through page 9, line 6.

The remaining amendments to the claims merely conform the language to the consisting essentially of terminology. Applicants respectfully submit that no new matter has been entered in the application by way of amendment to the claims.

Applicants respectfully submit that the amendments to the claims overcome the rejections under 35 USC 112.

Claims 2-4, 6-10, 12, 15-17 and 19-25 stand rejected under 35 USC 103(a) as unpatentable over Miller et al. (US 6,586,479). Applicants respectfully submit that Miller et al. neither teaches nor suggests the present invention.

Miller et al. discloses an oil in water emulsion prepared by adding a water/oil emulsifier preferably a sorbital ester, polyglycerol esters, sorbitan esters, fatty acid esters and/or dimethicone copolyols to the oil phase. The water in oil emulsion is then converted to an oil/water emulsion by the addition of hydrophilic components.

At column 3, beginning at line 34, Miller et al. teach:

"The hydrophobic/hydrophilic properties of the fine emulsion can be controlled through the choice of fatty acid component, where appropriate through the degree of ethoxylation and/or through the addition of neutralizing agent, but, in particular, through the choice of the hydrophilic component.

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Suitable hydrophilic components are, preferably, surfactants, coemulsifiers, soil release polymers and/or acid/alkali components.

The surfactants used as hydrophobic components are anionic, cationic, zwitterionic, amphoteric and/or nonionic surfactants. Preference is given to using amphoteric surfactants."

The specification beginning at line 48 details the various anionic, cationic, amphoteric and nonionic surfactants useful in the composition. The description extends through column 5, line 29. Applicants therefore respectfully submit that Miller et al. neither teaches nor suggests the composition consisting essentially of the hydrophilic emulsifier, the lipophilic coemulsifiers and water as presently claimed. Miller et al. clearly states that the hydrophilic surfactant is preferably an amphoteric surfactant and an amphoteric surfactant appears in all of the examples. Applicants respectfully submit that Miller et al. would teach one skilled in the art away from the present invention.

Applicants submit that to develop the present composition from the teachings of Miller et al., would require undue experimentation without any direction for formulating the composition of the invention or that such a composition would be useful in forming the microemulsion. Applicants therefore respectfully request that the Examiner reconsider the rejection over Miller et al.

Claims 2-4, 6-10, 12, 15-17 and 19-25 stand rejected under 35 USC 103(a) as unpatentable over Klier et al. (US 5,538,662). Applicants respectfully submit that Klier et al. neither teaches nor suggests the present invention.

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Applicants submit that the composition disclosed in Klier et al. is not a liquid at its use temperature. The composition disclosed in Klier et al. is a translucent gel composition which is not a liquid at its use temperature. Applicants therefore respectfully submit that a rejection based on Klier et al. is untenable and Applicants respectfully request that the rejection be reconsidered and withdrawn.

Applicants submit that the anionic gelling agent required in the Klier et al. composition removes the Klier composition from the composition of the present invention which consists essentially of an oil phase, at least one hydrophilic emulsifier which is an alkylpolyglycoside, at least one lipophilic coemulsifier. Applicants therefore respectfully submit that a rejection over Klier et al. is untenable and respectfully request that the rejection be reconsidered and withdrawn.

Applicants submit that there is no teaching or suggestion that a useful composition could be formed by removing the gelling agent from the Klier et al. composition.

Claims 1-4, 6-17, 19-30 and 32-38 stand rejected under 35 USC 103(a) as unpatentable over the combined teachings of Capuzzi et al. (US 5,905,072) and Auda et al. (US 6,586,366). Applicants respectfully submit that Capuzzi et al. is directed to an adjuvant for systemic fungicides in the form of a stable microemulsion comprising water, a mixture of methyl esters of fatty acids, an anionic surface-active agent, at least one non-ionic surface-active agent with an HLB of between 13-18 and a cloud point of >65°C and at least one non-ionic surface-active agent with an HLB of between 10 and 12. Applicants respectfully submit that since Capuzzi et al. requires the presence of an anionic surface-

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active agent, it would neither teach nor suggest the present invention. Applicants submit that there is neither teaching nor suggestion that the anionic surface-active agent required in a Capuzzi et al. composition could be removed from a composition and somehow the composition of the present invention could be developed.

The deficiencies in Capuzzi et al. are not cured by combination with Auda et al. Auda et al. is directed to an oil based emulsifiable concentrate including (a) at least one oil component; (b) at least one hydrocarbyl saccharide and (c) at least one other non-ionic surfactant. All of the suggested nonionic surfactants are alkoxylated with an average of 2 to 40 alkylene oxide groups. Applicants submit that there is neither teaching or suggestion of the composition of the present invention containing the lipophilic coemulsifiers useful in the practice of the present invention.

Applicants respectfully submit that as shown in the examples, the oil components contain additional emulsifier which appear to be complex mixtures of oil soluble material which further aid in the emulsification process. Applicants submit that the use of the additional emulsifiers in Auda et al. clearly bring the composition far outside of any composition disclosed and claimed in the present application.

Applicants respectfully submit that there is neither teaching nor suggestion in the combination of Capuzzi et al. with Auda et al. to remove the critical anionic surfactant from the Capuzzi et al. composition and at least one of the hydrophilic surface active agents in the Capuzzi et al. composition.

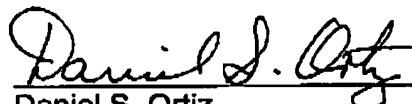
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Applicants respectfully submit that the combination of Capuzzi et al. with Auda et al. would not teach one skilled in the art the composition of the present invention.

In view of the amendments entered in the claims and the above discussion, Applicants respectfully submit that the application is in condition for allowance and favorable consideration is requested.

Respectfully submitted,



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